**IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA**

CWP No.1240 of 2005

Reserved on 19.9.2007

Date of decision 27.9.2007

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State of H.P. and another Petitioners

Vs.

Baldev Krishan and others Respondents

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Coram:

The Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?[1] No.

For the Petitioners: Mr.M.S.Chandel, Advocate General, with Mr.M.A.Khan and Mrs.Meenakshi Sharma, Deputy Advocate Generals.

For the respondents: Mr.Ashwani Pathak, Advocate, for respondents No.1 and 2.

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**Rajiv Sharma, J.**

A challenge has been laid by the State to the Award made by the Labour Court-cum-Industrial Tribunal, Dharamshala on 19.4.2005 in Reference No.102/99 (68/2004).

The brief facts necessary for the adjudication of this petition are that the State Government has made the following reference to the Labour Court-cum-Industrial Tribunal:

> "Whether the termination of the services of S/Sh.Ramesh Kumar and Baldev Krishan daily waged workers by Executive Engineer, Irrigation-cum-Public Health Division, Dalhousie District Chamba (H.P.) w.e.f. 04/98 without any notice, charge sheet, enquiry and without compliance of Section 25(F) of Industrial Disputes Act, 1947, is legal and justified. If not, to what relief of consequential service benefits including reinstatement, back

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[1] Whether reporter of local papers are allowed to see the judgment ? No.

wages, seniority and amount of compensation, the above aggrieved workmen are entitled?"

The respondents hereinafter referred to as the workmen for convenience sake had filed their statement of claims after the receipt of notices issued by the Labour Court. The principal stand of the workmen before the Labour Court was that they were engaged in June, 1995 and November, 1995, respectively by the employer and they have been retrenched on 1.4.1998 without following the mandatory provisions of Industrial Disputes Act, 1947. The employer had contested the claim filed by the workmen. The Labour Court on the basis of evidence, both oral and documentary led by the parties before it, had passed the award in affirmative directing the reinstatement of the workmen with 50% back wages as well as seniority.

The learned Advocate General had strenuously argued that the Award passed by the Labour Court on 19.4.2005 was without jurisdiction and thus not sustainable in the eyes of law. Mr.Ashwani Pathak, learned counsel for the respondents No.1 and 2 had supported the Award dated 19.4.2005.

I have heard the learned counsel for the parties and have gone through the record carefully.

The respondent No.1 was engaged in the month of June, 1995. He had discharged his duties up to 1.4.1998. The respondent No.2 was engaged in the month of November, 1995 and he had also worked up to 1.4.1998. Sh.Baldev Krishan had appeared as PW-1 and Sh.Ramesh Kumar as PW-2. They had testified that they were engaged in the year 1995 and had been retrenched on 1.4.1998 without issuing show cause notice nor they had been paid any retrenchment compensation. They had also stated in their statement of claims that the employer had prevented them from completing 240 days preceding their retrenchment by giving

them artificial breaks and also by not including Sundays and National holidays. Respondent No.1 Baldev Krishan had completed 305 days in the year 1996, 263 days in the year 1997 and 233 days in the year 1998. A bare perusal of man days chart annexed with the petition suggests that the workmen had been prevented from completing 240 days in a block of 12 calendar months by giving them artificial breaks. It is also evident that the employer had not included the Sundays and National holidays while calculating 240 days. It is now well settled that Sundays and National holidays are to be included while calculating 240 days as per Section 25(b) of the Industrial Disputes Act, 1947. The findings recorded by the Labour Court that the workmen were prevented from completing 240 days by giving them artificial breaks and also not counting Sundays and National Holidays for the purpose of calculating 240 days is upheld.

Hon'ble Single Judge of Uttranchal High Court has held in **Mahendra vs. Presiding Officer, Labour Court, Dehradun and another**, 2005 LLR 109 that Sundays and other holidays are to be included while calculating total number of days. His Lordship has held as under :

> "From the above findings it is clear that the Labour Court has specifically recorded the findings that the petitioner has worked for 203 days in twelve preceding months from the date of his termination but it has erred in not calculating 52 Sundays and 17 other holidays while calculating the total number of days of his continuous service and had it been so the number of days of continuous service of the petitioner-workman would have definitely been more than 240 days."

Sh.Ramesh Kumar, PW-2 had testified that Brij Lal and Hem Raj were juniors but had been retained while retrenching him. The statement of the workman has not been rebutted by the employer though Sh.Suresh Mahajan had appeared as RW-1. In fact Sh.Suresh Mahajan was not

serving as Assistant Engineer at the time when the workmen were retrenched on 1.4.1998 since he had joined his duties as Assistant Engineer, I&PH Sub Division, Banikhet on 1.8.2003. The workmen had never worked under him. The plea of the employer that it was a case of abandonment and not retrenchment had not been substantiated before the Labour Court. The plea of abandonment is a question of fact and is required to be proved in accordance with law.

Accordingly there is no merit in the writ petition and the same is dismissed and the award dated 19.4.2005 is upheld with no order as to costs.

September 27 ,2007(g). **( Rajiv Sharma),J.**